



**STATE OF MISSOURI  
OFFICE OF ADMINISTRATION  
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)  
REQUEST FOR PROPOSAL**

**RFP NO. B3Z04207**

**TITLE: Utility Rate Financial Consulting and Analysis**

**ISSUE DATE: 04/20/04**

**REQ#: NR 419 30804000006**

**BUYER: Mary Call**

**PHONE NO.: (573) 751-1695**

**E-MAIL: mary.call@oa.mo.gov**

**RETURN PROPOSAL NO LATER THAN: May 14, 2004 AT 2:00 PM**

**MAILING INSTRUCTIONS:** Print or type **RFP Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Proposals must be in DPMM office (301 W High St, Rm 630) by the return date and time.

**RETURN PROPOSAL TO: DPMM or DPMM**  
**P O BOX 809 301 WEST HIGH ST, RM 630**  
**JEFFERSON CITY MO 65102-0809 JEFFERSON CITY MO 65101**

**CONTRACT PERIOD: From Date of Award for One Year**

**DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESS:**

Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

The offeror hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Request for Proposal (Revised 01/08/04). The offeror further agrees that the language of this RFP shall govern in the event of a conflict with his/her proposal. The offeror further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when this RFP is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the offeror and the State of Missouri.

**SIGNATURE REQUIRED**

AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	
COMPANY NAME			
MAILING ADDRESS			
CITY, STATE, ZIP			
FEDERAL EMPLOYER ID NO.		SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE	
PHONE NO.	FAX NO.		E-MAIL ADDRESS

**NOTICE OF AWARD (STATE USE ONLY)**

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:			
CONTRACT NO.		VENDOR NO.	
BUYER		DATE	
		DIRECTOR	

## **1. INTRODUCTION AND GENERAL INFORMATION**

### **1.1 Introduction:**

- 1.1.1 This document constitutes a request for competitive, sealed proposals for the provision of professional consulting services for assistance in financial analysis for (1) rate of return/cost of capital cases, (2) merger and acquisition cases, and (3) finance cases as set forth herein.
- 1.1.2 Organization - This document, referred to as a Request for Proposal (RFP), is divided into the following parts:
- 1) Introduction and General Information
  - 2) Contractual Requirements
  - 3) Proposal Submission Information
  - 4) Pricing Page(s)
  - 5) Exhibits A - C
  - 6) Terms and Conditions

### **1.2 Background Information:**

- 1.2.1 The Public Service Commission consists of five commissioners who are appointed by the Governor with the advice and consent of the Missouri Senate. The Commission is both quasi-judicial and quasi-legislative. The Commission is responsible for deciding cases brought before it and for the promulgation of administrative rules and their enforcement. The Commission performs many of its duties by conducting hearings in contested cases. The hearings are conducted in a trial-like atmosphere using evidentiary standards under the Missouri Administrative Procedure Act. The Commission must render decisions in a timely manner to afford all parties procedural and substantive due process and to comply with statutory time limits.
- 1.2.2 The Commission is assisted by its staff of professionals in the fields of engineering, management, accounting, law, finance, economics and consumer affairs. The Staff participates as a party in cases filed before the Commission. In reaching a decision, the Commission uses the recommendations of the staff and the other parties to the proceeding.
- 1.2.3 The PSC's Financial Analysis Department consists of three personnel; the manager and two professional level staff members. Due to military obligations, this department will be reduced to two individuals. Therefore it may become difficult for the department to effectively and efficiently manage the activities and projects associated with its duties for the Commission. Therefore, this RFP is designed to obtain the services of a professional consultant to assist the Financial Analysis Department staff as necessary to ensure successful completion of various projects and case activities on an as needed, if needed basis.
- 1.2.4 Although an attempt has been made to provide accurate and up-to-date information, the State of Missouri does not warrant or represent that the background information provided herein reflects all relationships or existing conditions related to this Request for Proposal.

## **2. CONTRACTUAL REQUIREMENTS**

### **2.1 General Requirements:**

- 2.1.1 The contractor shall provide professional and technical consulting services, which may include but not necessarily be limited to, critical review and analysis and/or testimony and schedules in relation to any case activities necessary for the Financial Analysis Department of the Missouri Public Service Commission (hereinafter referred to as the state agency). The contractor shall provide all services on an as needed, if needed basis in accordance with the provisions and requirements stated herein and to the sole satisfaction of the state agency.
- 2.1.2 The contractor shall understand the importance of meeting all work deadlines established by the state agency Commissioners and the state agency staff and shall agree and understand that failure to do so may jeopardize the state agency staff's ability to comply with state agency orders and the state agency's ability to fulfill its lawful responsibilities within the relevant statutory provisions contained in Chapter 386 and 392 RSMo. Therefore, the contractor shall meet all work deadlines established by the state agency and the state agency staff.
- 2.1.3 The contractor must function as the single point of contact for the state agency, regardless of any subcontract arrangements for products and/or services. This shall include assuming responsibility and liabilities for services provided. By no later than fifteen (15) calendar days after the effective date of the contract, the contractor must provide the state agency with the name, address, and phone number of a person within the contractor's organization who shall serve as the contractor's representative for the contract.
- 2.1.4 The contractor shall understand that all documentation, including but not limited to written testimony, case recommendations and work papers, produced while performing this proposal become the sole property of the state agency.
- 2.1.5 Personnel Qualifications - At a minimum, the senior level personnel assigned to provide services pursuant to the contract must have the following minimum qualifications:
  - a. Education: Masters Degree in Finance, Accounting, Business, and/or Economics.
  - b. Experience:
    - 1) Several years (prefer five) experience conducting cost of capital/rate of return analyses, mergers and acquisitions analyses, evaluating financing requests, writing testimony, writing recommendations and testifying in a utility regulatory environment.
    - 2) Experience performing more than one cost of capital/rate of return analysis for the gas industry and more than one cost of capital/rate of return analysis for the electric industry.
    - 3) In addition, such person should have similar experience performing cost of capital/rate of return analysis for the water industry.

### **2.2 Performance Requirements:**

- 2.2.1 Request for Services:
  - a. Projects/Work Plans - As the state agency identifies the need for the contractor's services, the state agency shall contact the contractor and request a work plan for the project. In consideration of the multiple contracts awarded, at the time the need for services are determined by the state agency, the state agency shall first contact the primary contractor to request the work plan for the needed service project. In the event that the primary contractor is unable to provide the required services due to

unavailability of qualified personnel or the inability of the primary contractor to develop a work plan acceptable to the state agency, the state agency shall contact the secondary contractor.

- 1) In addition, on an exception-only basis, the state agency shall have the right to contact both the primary and secondary contractors and request a work plan from both the primary and secondary contractor. In such event, the state agency shall conduct an analysis of the each work plan submitted and award the project to the contractor submitting the lowest and best work plan.
  - 2) When requesting a work plan, the state agency shall either schedule a meeting with the contractor (either in person or via telephone conversation) to discuss the project, or shall provide the contractor with written information regarding the services desired. The state agency's request will explain in detail the scope of the project and basic information regarding the tasks the state agency anticipates will be included, including any of the following, as applicable:
    - ❖ applicable business and technical specifications,
    - ❖ a description of the type and focus of the potential project,
    - ❖ specific instructions, standards, and requirements applicable to the project, including but not limited to budget limitations, progress report requirements, etc.,
    - ❖ any applicable implementation/completion dates, and
    - ❖ a due date for submission of the work plan to the state agency.
- b. As needed, hourly services – It is also possible that the state agency shall require the contractor's services on an as needed, hourly basis and will not require the contractor to design and execute a work plan for a "project". In such event, as the state agency identifies the need for such services, the state agency shall contact the primary contractor to schedule such services on an as needed, if needed, contingency basis. The timing and scheduling of any such services shall be mutually agreed between the contractor and the state agency at the time of the request for services. If the primary contractor is unable to provide the required services due to unavailability of qualified personnel, the state agency shall contact the secondary contractor.

2.2.2 Potential Services/Projects - The contractor shall agree and understand that actual services that may be required by the State of Missouri are not known. However, the state agency has identified the following as potential types (although not necessarily a comprehensive list) of services/projects that may be pursued:

- a. **Cost of Capital/Rate of Return** - Services may include, but not necessarily be limited to:
  - 1) Issuing data requests to utility companies requesting financial information.
  - 2) Reviewing and analyzing financial information.
  - 3) Preparing estimates of the cost of capital/rate of return for Missouri jurisdictional utilities using Discounted Cash Flow Model, Capital Asset Pricing Model, Risk Premium Model and other models and techniques.
  - 4) Preparing written testimony and providing testimony before the state agency (Missouri Public Service Commission).
- b. **Mergers and Acquisitions** - Services may include, but not necessarily be limited to:
  - 1) Analyzing requests for merger and acquisitions submitted to the state agency by jurisdictional utilities.
  - 2) Issuing data requests as needed.
  - 3) Analyzing financial information.
  - 4) Preparing written recommendations and testimony, and providing testimony as to the potential detrimental impact of the proposed merger and/or acquisition.

- c. **Finance Request** - Services may include, but not necessarily be limited to:
  - 1) Analyzing requests for financing submitted to the state agency by jurisdictional utilities.
  - 2) Issuing data requests as needed.
  - 3) Analyzing financial information.
  - 4) Preparing written recommendations and testimony, and providing testimony as to the potential detrimental impact of the proposed financing.
- d. **Technical Assistance/Consultation**- Services may include, but not necessarily be limited to:
  - 1) Consulting with the staff of the Financial Analysis Department on rate cases, finance cases and major merger cases.
  - 2) Reviewing analyses and written testimony of the staff of the Financial Analysis Department.
  - 3) Providing feedback to the staff of the Financial Analysis Department on the consistency of its analysis and written testimony with financial theory and regulatory theory.

2.2.3 Work Plan Submission - By no later than the due date specified by the state agency, the contractor shall develop and submit the written work plan to the state agency. The contractor must, at a minimum, include the following detailed information in the written work plan along with any other information required by the state agency, unless the scope of the project renders certain information not applicable:

- a. Title of the proposed services/project.
- b. General short description of the proposed services/project.
- c. Names and contact numbers of each of the contractor's personnel who will be assigned to provide the services/work on the project. At a minimum, *the contractor must assign at least one (1) senior level person to each project.*
- d. Scope of the proposed services/project including specific activities and methodology that will be performed. The scope must include a detailed description of implementation through completion including a full and complete description of each proposed solution necessary.
- e. Probable positive and negative aspects affecting the State of Missouri, community, or others, as applicable.
- f. Manpower hours and effort required by both the contractor (and state agency or other State of Missouri personnel, if applicable).
- g. A description of the type and degree of access to records and materials that will be required by the contractor in order to perform the services.
- h. Amount of time and extent of need for State of Missouri facilities and equipment.
- i. Time periods that will be affected, including projected implementation date, completion date, time limitations, etc.
- j. **A total guaranteed not to exceed price** that shall constitute the amount the contractor shall be paid if authorized to perform the services/project. Such total guaranteed not to exceed price shall be based on the firm fixed hourly prices and per diems specified in the contract and shall include all costs and expenses necessary to perform the project.
- k. Signature and date lines for both the contractor and the state agency's authorized signatures to signify approval.

- 2.2.4 Oral Presentation of Work Plan - If required by the state agency, the contractor shall orally present the contractor's work plan to the state agency. If required, such presentation shall be scheduled by the state agency with at least fifteen (15) calendar days notice to the contractor, unless otherwise mutually approved by both parties.
- 2.2.5 Changes to Work Plan - The contractor shall agree and understand that the state agency shall have the right to reject the contractor's work plan, or any portion thereof, for any reason and shall have the right to require modifications, changes, and/or additional elaboration to the work plan as deemed necessary in order to ensure a comprehensive project and to ensure that the contractor's proposed services are acceptable and will accomplish the desired objectives. Any negotiations regarding the work plan shall be conducted by the state agency.
- 2.2.6 Acceptance/Rejection of Work Plan – If the work plan is approved for implementation, the state agency shall provide the contractor with written acceptance of the contractor's work plan and authorization to proceed. If accepted, the contractor and the state agency must indicate mutual acceptance of the work plan by signing and dating the final work plan in the signature blanks included in the plan. If the state agency decides not to proceed with the work plan, the state agency shall notify the contractor of such rejection, in writing.
- 2.2.7 Implementation/Execution of Work Plan - After receipt of written authorization to proceed, the contractor shall perform the services required for the project in accordance with the written work plan accepted by the state agency. Unless otherwise specified in the written work plan, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services.
- 2.2.8 Progress Reports - Immediately after receipt of the authorization to proceed for a project, the contractor shall begin providing an electronic progress report to the state agency for review, which must briefly describe those items listed below. The progress report will be required on a regularly scheduled basis consistent with the project being performed. The state agency will specify the required scheduling for such progress reports at the time of request for a work plan. It is anticipated that most projects will require monthly reporting, however the need for weekly or even daily reporting is a possibility:
- a. The specific accomplishments achieved during the reporting period.
  - b. The specific tasks completed since authorization to proceed pursuant to the provisions of the work plan and the completion dates of such tasks.
  - c. The specific tasks and projected completion date(s) remaining to be completed pursuant to the provisions of the written work plan.
- 2.2.9 Modifications to Work Plan - After implementation/execution of a work plan, modifications to the written work plan shall be permitted due to changing economic or environmental conditions, changes to state and/or federal laws or regulations, or for other reasons deemed necessary and approved by the state agency pursuant to the following conditions:
- a. State agency requested changes – If the state agency determines that modifications to the written work plan are necessary or desired, the state agency will document the requested changes to the contractor in writing with any new instructions for the project. Based on the written instructions provided by the state agency, the contractor must revise the written work plan according to the requirements for the written work plan specified herein, including any resulting changes in the amount to be paid to the contractor, etc.
  - b. Contractor requested changes - If, after implementation of services, the contractor determines that modifications to the written work plan are necessary, the contractor must submit a written request to the state agency for changes. The written request must include the reason for the modification and must detail the contractor's proposed changes to the written work plan, including any resulting

changes in the amount to be paid to the contractor, etc. The contractor shall agree and understand that the state agency will review the written request of the contractor and shall send written notice of approval or disapproval of the request to the contractor.

- c. The contractor shall agree and understand that the state agency shall have the final approval of all individual components of the written work plans revised as specified herein and reserves the right to require modifications (including changes in the price, completion date, etc), deletions, and or additional elaboration to the written work plan as the state agency deems necessary. The contractor shall agree and understand that the decision by the state agency shall be final and without recourse.
- d. The contractor shall not proceed with implementation of services related to the modifications until final written approval of the state agency is obtained.

2.2.10 Termination of Work Plan - The state agency shall have the right to terminate any project at any time at the sole discretion of the state agency, without penalty or recourse, by giving written notice to the contractor at least five working days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, reports, and accomplishments prepared, furnished or completed by the contractor pursuant to the terms of the contract shall, at the option of the State of Missouri, become the property of the State of Missouri. The contractor shall be entitled to receive just and equitable compensation at the firm fixed hourly prices specified in the contract for work completed in accordance with the work plan prior to the effective date of the termination.

2.2.11 Final Report - By no later than the time approved in the written work plan, the contractor shall provide the state agency with an electronic copy of a final written report documenting the results of the project.

- a. The final written report shall include, but not be limited to including, the following:
  - 1) Title of the services/project,
  - 2) A detailed description of the project performed including a full and complete description of each solution used, and the results, if applicable, time period, etc.,
  - 3) Positive and negative aspects affecting the State of Missouri, or others, as applicable,
  - 4) Policy/procedural changes implemented, including citation of applicable rule or regulation pertaining to project.
- b. The state agency shall have the right to modify and/or to require additional elaboration of the final report as it deems necessary to ensure a comprehensive and thorough written report of all services provided and work performed in the performance project.
- c. If required by the state agency, the contractor shall make at least one (1) oral presentation of the final report to persons or organizations as deemed necessary by the state agency.

## **2.3 Invoicing and Payment Requirements:**

2.3.1 Immediately upon award of the contract, the contractor needs to submit or must have already submitted a properly completed State Vendor ACH/EFT Application, since the State of Missouri intends to make contract payments through Electronic Funds Transfer.

- a. If not already submitted, the contractor needs to obtain a copy of the State Vendor ACH/EFT Application and completion instructions from the Internet at:  
<http://www.oa.state.mo.us/purch/vendorinfo/vendorach.pdf>
- b. The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the State of Missouri's EFT addendum record to enable the contractor to properly apply the state agency's payment to the invoice submitted.

- 2.3.2 Submission of Invoices for Services - The contractor must submit monthly itemized invoices as specified below to the state agency at Missouri Public Service Commission, Budget and Fiscal Services, P.O. Box 360, Jefferson City, MO 65102.
- a. Personnel Time – The contractor shall specify the actual hours spent working on the assigned services, and the appropriate firm fixed hourly price for the personnel classification as specified on the pricing page(s) of the contract. Actual hours spent working shall not include travel time. However, travel for testifying and conducting necessary site visits will be reimbursed. Travel is expected to be minimal.
    - 1) The contractor shall only invoice for services performed by personnel classifications listed on the Pricing Page of the contract.
    - 2) The contractor shall support all hours invoiced with detailed time sheets indicating the hours worked each day by each person.
  - b. Per Diem – The contractor shall specify the number of days each person actually worked at least six (6) hours on site at the state agency’s facilities or on site at a location at least sixty (60) miles outside the contractor’s official domicile and the firm, fixed per diem specified on the Pricing Page(s).
    - 1) The per diem shall be the same for all personnel without regard to personnel classification or official domicile.
    - 2) The per diem shall be the only reimbursement due the contractor for meals, lodging, transportation, and all other personnel-related expenses related to travel or performance of services outside the contractor’s official domicile.
    - 3) The per diem shall only be payable if the contractor’s person worked at least six hours on contract activities for a given day at the state agency or at a location at least sixty (60) miles outside of the contractor’s official domicile.
- 2.3.3 Payment for Services - After approval by the state agency of the invoice and services provided, the contractor shall be paid for services for personnel time and per diems in accordance with firm, fixed prices stated on the Pricing Page.
- a. If the contractor performed the services on an as needed, hourly basis, the contractor shall be paid monthly per the invoice.
  - b. If the contractor performed the services pursuant to an approved work plan, the following shall apply:
    - 1) The state agency shall retain ten percent (10%) of the amount of each invoice and shall pay the ten percent (10%) retainage to the contractor by no later than sixty days after completion of the project and the state agency’s final acceptance of the contractor’s services for and receipt and approval by the state agency of the final invoice for the project.
    - 2) In no event shall the maximum amount paid to the contractor for each project, exceed the guaranteed not to exceed total price approved by the state agency in the work plan for the project.
- 2.3.4 Other Costs and Expenses – If the contractor performed services pursuant to an approved work plan and if other costs and expenses were approved by the state agency as part of the approved work plan, the contractor shall indicate other costs and expenses incurred and shall attach copies of invoices and/or other receipts to the contractor’s invoice. The contractor shall be reimbursed for other costs and expenses previously approved by the state agency as part of the work plan.
- 2.3.5 No other payments or reimbursements other than those specified herein shall be made to the contractor.



## **2.4 Other Contractual Requirements:**

- 2.4.1 Contract - A binding contract shall consist of: (1) the RFP, amendments thereto, and any Best and Final Offer (BAFO) request(s) with RFP changes/additions, (2) the contractor's proposal including any BAFOs and (3) the Division of Purchasing and Materials Management's acceptance of the proposal by "notice of award" or by "purchase order". All Exhibits and Attachments included in the RFP shall be incorporated into the contract by reference.
- a. The notice of award does not constitute a directive to proceed. Before providing services, the contractor must receive a mutually accepted and agreed to work plan with written authorization to proceed from the state agency. If the services are to be provided by the contractor on an as needed, if needed basis, the contractor must receive a scheduling of services required by the state agency prior to performing any services.
  - b. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
  - c. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Division of Purchasing and Materials Management prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence from the state agency, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.
- 2.4.2 Contract Period - The original contract period shall be as stated in the Request for Proposal (RFP). The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period. The Division of Purchasing and Materials Management shall have the right, at its sole option, to renew the contract for two (2) additional one-year periods, or any portion thereof. In the event the Division of Purchasing and Materials Management exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.
- 2.4.3 Renewal Periods - If the option for renewal is exercised by the Division of Purchasing and Materials Management, the contractor shall agree that the prices for the renewal period shall not exceed the maximum price for the applicable renewal period stated on the Pricing Page of the contract.
- a. If renewal prices are not provided, then prices during renewal periods shall be the same as during the original contract period.
  - b. The Division of Purchasing and Materials Management does not automatically exercise its option for renewal based upon the maximum price and reserves the right to offer or to request renewal of the contract at a price less than the maximum price stated.
- 2.4.4 Transition - Upon expiration, termination, or cancellation of the contract, the contractor shall assist the state agency to insure an orderly transfer of responsibility and/or the continuity of those services required under the terms of the contract to an organization designated by the state agency, if requested in writing. The contractor shall provide and/or perform any or all of the following responsibilities:
- a. The contractor shall deliver, FOB destination, all records, documentation, reports, data, recommendations, or printing elements, etc., which were required to be produced under the terms of the contract to the state agency within seven (7) days after receipt of the written request.
  - b. The contractor shall agree to continue providing any part or all of the services in accordance with the terms and conditions, requirements and specifications of the contract for a period not to exceed ninety (90) calendar days after the expiration, termination or cancellation date of the contract for a price not to exceed those prices set forth in the contract.

- c. The contractor shall discontinue providing service or accepting new projects under the terms of the contract, on the date specified by the state agency, in order to ensure the completion of such service prior to the expiration of the contract.

2.4.5 Contractor Liability - The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act.

- a. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.
- b. The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
- c. Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); (2) loss of, or damage to, the state's records or data; or (3) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.

2.4.6 Insurance - The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.

- a. The insurance coverage shall include general liability and appropriate professional liability.
- b. Written evidence of the insurance shall be provided by the contractor to the state agency. The evidence of insurance shall include, but shall not necessarily be limited to: effective dates of coverage, limits of liability, insurer's name, policy number, endorsement by representatives of the insurance company, etc. Evidence of self-insurance coverage or of another alternative risk financing mechanism may be utilized provided that such coverage is verifiable and irrevocably reliable. The evidence of insurance coverage must be submitted before or upon award of the contract. The contract number must be identified on the evidence of insurance coverage.
- c. In the event the insurance coverage is canceled, the state agency must be notified immediately.

2.4.7 Subcontractors - Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor.

- a. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract.
- b. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein.
- c. The contractor must provide notice and obtain acknowledgement from the State of Missouri prior to changing subcontractors.

- 2.4.8 Substitution of Personnel – The contractor agrees and understands that the State of Missouri's agreement to the contract is predicated in part on the utilization of the specific individual(s) and/or personnel qualifications identified in the bid. Therefore, the contractor agrees that no substitution of such specific individual(s) and/or personnel qualifications shall be made without the prior written approval of the state agency. The contractor further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the state agency's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The State of Missouri agrees that an approval of a substitution will not be unreasonably withheld.
- 2.4.9 Contractor Status - The contractor represents himself or herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of the State of Missouri. Therefore, the contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the State of Missouri, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.
- 2.4.10 Coordination - The contractor shall fully coordinate all contract activities with those activities of the state agency. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the state agency or the Division of Purchasing and Materials Management throughout the effective period of the contract.
- 2.4.11 Force Majeure - The contractor shall not be liable for any excess costs for delayed delivery of goods or services to the State of Missouri, if the failure to perform the contract arises out of causes beyond the control of, and without the fault or negligence of the contractor. Such causes may include, however are not restricted to: acts of God, fires, floods, epidemics, quarantine restrictions, strikes, and freight embargoes. In all cases, the failure to perform must be beyond the control of, and without the fault or negligence of, either the contractor or any subcontractor(s). The contractor shall take all possible steps to recover from any such occurrences.
- 2.4.12 Property of State - The contractor shall agree and understand that all programs, reports, materials, documentation, etc., which are developed or acquired by the contractor as a requirement of the contract shall become the property of the State of Missouri, which shall include all rights and interests for present and future use or sale as deemed appropriate by the state agency.
- a. The State of Missouri understands and agrees that any ancillary software tools or pre-printed materials (e.g., project management software tools or training software tools, etc.) developed or acquired by the contractor that may be necessary to perform a particular service required hereunder but not required as a specific deliverable of the contract, shall remain the property of the contractor; however, the contractor shall be responsible for ensuring such tools and materials are being used in accordance with applicable intellectual property rights and copyrights.
  - b. The contractor shall further agree that no reports, documentation, or material prepared, including the program(s) developed as required by the contract, shall be used or marketed by the contractor or released to the public without the prior written consent of the state agency.
  - c. The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential.

### **3. PROPOSAL SUBMISSION INFORMATION**

#### **3.1 Submission of Proposals:**

3.1.1 ELECTRONIC SUBMISSION OF PROPOSALS THROUGH THE ON-LINE BIDDING WEB SITE IS NOT AVAILABLE FOR THIS RFP.

3.1.2 When submitting a proposal, the offeror should include three (3) additional copies along with their original proposal.

- a. Both the original and the copies should be printed on recycled paper and double sided. All proposals and copies should minimize or eliminate the use of non-recyclable materials such as plastic report covers, plastic dividers, vinyl sleeves, and binding.
- b. Imaging Ready – In addition, all proposals are scanned into the Division of Purchasing and Materials Management imaging system after a contract is executed, or all proposals are rejected.
  - 1) The scanned information will be able to be viewed through the Internet from the Public Record Search system. Therefore, the offeror is advised not to include personal identifying information such as social security numbers in the proposal.
  - 2) In preparing a proposal, the offeror should be mindful of document preparation efforts for imaging purposes and storage capacity that will be required to image the proposals. Glue bound materials should not be used.

3.1.3 To facilitate the evaluation process, the offeror is encouraged to organize their proposal into distinctive sections that correspond with the individual evaluation categories described herein. The offeror is cautioned that it is the offeror's sole responsibility to submit information related to the evaluation categories and that the State of Missouri is under no obligation to solicit such information if it is not included with the proposal. The offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.

- a. Each distinctive section should be titled with each individual evaluation category and all material related to that category should be included therein.
- b. The proposal should be page numbered.
- c. The signed page one (1) from the original RFP and all signed amendments should be placed at the beginning of the proposal.

3.1.4 Offeror's Contacts:

- a. Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to the buyer of record indicated on the first page of this RFP. The buyer may be contacted via e-mail or phone as shown on the first page, or via facsimile to 573-526-9817. The offeror may contact the Office of Equal Opportunity regarding MBE/WBE certification or subcontracting with MBE/WBE companies at (877) 259-2963 or (573) 751-8130 or by fax at (573) 522-8078.
- b. Offerors and their agents may not contact any other state employee regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record.
- c. Offerors are advised that any questions received less than ten calendar days prior to the RFP opening date may not be answered.

**3.2 Competitive Negotiation of Proposals** - The offeror is advised that under the provisions of this Request for Proposal, the Division of Purchasing and Materials Management reserves the right to conduct negotiations of the proposals received or to award a contract without negotiations. If such negotiations are conducted, the following conditions shall apply:

- 3.2.1 Negotiations may be conducted in person, in writing, or by telephone.
- 3.2.2 Negotiations will only be conducted with potentially acceptable proposals. The Division of Purchasing and Materials Management reserves the right to limit negotiations to those proposals which received the highest rankings during the initial evaluation phase. All offerors involved in the negotiation process will be invited to submit a best and final offer.
- 3.2.3 Terms, conditions, prices, methodology, or other features of the offeror's proposal may be subject to negotiation and subsequent revision. As part of the negotiations, the offeror may be required to submit supporting financial, pricing and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the proposal.
- 3.2.4 The mandatory requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the Division of Purchasing and Materials Management determines that a change in such requirements is in the best interest of the State of Missouri.

**3.3 Evaluation and Award Process:**

- 3.3.1 After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use both objective analysis and subjective judgment in conducting a comparative assessment of the proposal in accordance with the evaluation criteria stated below:
  - a. Cost ..... 40%
  - b. Experience, Reliability, Expertise, and Approach ..... 60%
- 3.3.2 The State of Missouri anticipates making multiple awards and designating the resulting contracts as either the primary contract or secondary contract.
- 3.3.3 After an initial screening process, a question and answer conference or interview may be conducted with the offeror, if deemed necessary by the Division of Purchasing and Materials Management. In addition, the offeror may be asked to make an oral presentation of their proposal during the conference. Attendance cost at the conference shall be at the offeror's expense. All arrangements and scheduling shall be coordinated by the Division of Purchasing and Materials Management.
- 3.3.4 Preference for Organizations for the Blind and Sheltered Workshops - A five (5) bonus point preference shall be granted to offerors including products and/or services manufactured, produced or assembled by a qualified nonprofit organization for the blind established pursuant to 41 U.S.C. sections 46 to 48c or a sheltered workshop holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920 RSMo. Five bonus points will be added to the total evaluation points for offerors qualifying for the preference.
  - a. If the offeror is an organization for the blind or sheltered workshop, the offeror should provide evidence of qualifications (i.e., copy of certificate or certificate number).
  - b. If the offeror is utilizing an organization for the blind or a sheltered workshop as a subcontractor, the offeror should submit: (1) a letter of intent signed by the organization for the blind or sheltered workshop describing the products/services they will provide and indicating their commitment to aid the contractor's performance under the prospective state contract, and (2) evidence that the subcontractor qualifies as an organization for the blind or sheltered workshop.

- c. The two known organizations for the blind in the State of Missouri are Lighthouse for the Blind and Alpha Pointe. A list of Missouri sheltered workshops can be found at the following internet address:

<http://www.dese.state.mo.us/divspeced/shelteredworkshops/swindex.html>

### 3.4 Evaluation of Cost:

- 3.4.1 The objective evaluation of cost shall be based upon the following calculation. The totals for each calculation will include the original contract period plus renewal option periods. If mid-level and/or entry level personnel classifications are not provided, for cost calculation purposes, the number of hours assigned to the not-provided level(s) will be applied to the average hourly price for the next highest level of personnel provided.

- a. **Cost of Capital/Rate of Return** - A total shall be computed using an average hourly price for the senior-level personnel classifications times 20 hours, an average hourly price for the mid-level personnel classification times 20 hours, an average hourly price for the entry-level personnel times 20 hours, and the per diem times 30.
- b. **Mergers and Acquisitions** - A total shall be computed using an average hourly price for the senior-level personnel classifications times 10 hours, an average hourly price for the mid-level personnel classification times 10 hours, an average hourly price for the entry-level personnel times 10 hours, and the per diem times 30.
- c. **Finance Cases** - A total shall be computed using an average hourly price for the senior-level personnel classifications times 20 hours, an average hourly price for the mid-level personnel classification times 20 hours, an average hourly price for the entry-level personnel times 20 hours, and the per diem times 30.
- d. **Technical Assistance/Consultations** - A total shall be computed using an average hourly price for the senior-level personnel classifications times 50 hours, an average hourly price for the mid-level personnel classification times 50 hours, an average hourly price for the entry-level personnel times 50 hours, and the per diem times 30.
- e. The sum of the three totals computed per the above will be added together for a grand total. Cost points shall be calculated from the grand total using the following formula:

$$\frac{\text{Lowest Responsive Grand Total Price}}{\text{Compared Grand Total Price}} \times 40 = \text{Cost score points}$$

- 3.4.2 The offeror shall agree and understand that the quantities used in the evaluation of cost are provided solely to document how cost will be evaluated. The State of Missouri makes no guarantee regarding the accuracy of the quantities stated nor does the State of Missouri intend to imply that the figures used for the cost evaluation in any way reflect actual nor anticipated usage.

### 3.5 Evaluation of Offeror's Experience, Reliability, Expertise, and Approach:

- 3.5.1 Experience and reliability of the offeror's organization are considered subjectively in the evaluation process. Therefore, the offeror is advised to submit any information which documents successful and reliable experience in past performances, especially those performances related to cost of capital/rate of return analysis, mergers and acquisitions analysis, evaluating financing requests, writing testimony, and writing recommendations and testifying in utility regulatory environment. The offeror should complete Exhibit A and should provide with information about previous and current services/contracts performed by the offeror's organization and any proposed subcontractors which are similar to the requirements of this

RFP. The offeror should copy Exhibit A and provide multiple examples of past/current performances related to the requirements of this RFP.

- a. **For those experiences presented on Exhibit A, the offeror should supply *copies of work performed* conducting cost of capital/rate of return analyses, mergers and acquisitions analyses and evaluating financing requests.**
- b. The offeror should obtain the signature of the contact person referenced on Exhibit A verifying that that information presented is accurate. The contact person's signature also represents that the contact person is willing and will be available for contact by the State of Missouri in order to discuss the services performed by the offeror for the contact person's company.

3.5.2 Business Compliance - The offeror must be in compliance with the laws regarding conducting business in the State of Missouri. The offeror certifies by signing the signature page of this original document and any amendment signature page(s) that the offeror and any proposed subcontractors are presently in compliance with such laws. The offeror shall provide documentation of compliance upon request by the Division of Purchasing and Materials Management. The compliance to conduct business in the state shall include, but not necessarily be limited to:

- a. Registration of business name (if applicable)
- b. Certificate of authority to transact business/certificate of good standing (if applicable)
- c. Taxes (e.g., city/county/state/federal)
- d. State and local certifications (e.g., professions/occupations/activities)
- e. Licenses and permits (e.g., city/county license, sales permits)
- f. Insurance (e.g., worker's compensation/unemployment compensation)

3.5.3 The qualifications of the personnel proposed by the offeror to perform the requirements of this RFP, whether from the offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the offeror should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.

- a. The offeror should use Exhibit B for providing the personnel information requested about each person proposed and included on the pricing tables. Resumes are not required since the information necessary should be included in the information included on Exhibit B.
- b. If personnel are not yet hired, the offeror should provide detailed descriptions of the required employment qualifications; and detailed job descriptions of the position to be filled, including the type of person proposed to be hired.

3.6 **Miscellaneous Information** - The offeror should provide all additional information requested on Exhibit C.

**4. PRICING PAGE**  
(Commodity Code 95580)

**4.1 Cost of Capital/Rate of Return Services/Projects :**

**4.1.1 Cost of Capital/Rate of Return Services/Projects Personnel Classification Prices:**

The offeror shall state the personnel classification proposed to provide services, the name of the person(s) assigned to that classification, and the firm fixed price per hour for each classification. If additional space is needed, the offeror may attach copies of this page.

Line #	Personnel Classification	Name of Person(s) Proposed	Firm Fixed Price Per Hour
<b>SENIOR LEVEL Cost of Capital/Rate of Return Personnel</b>			
A senior level personnel classification shall be defined as management/supervisory level and/or highest technically skilled who will be assigned lead roles within requested projects. All proposed personnel must have higher qualifications than mid-level.			
		1. 2. 3.	\$ _____
		1. 2. 3.	\$ _____
		1. 2. 3.	\$ _____
<b>MID-LEVEL Cost of Capital/Rate of Return Personnel</b>			
A mid-level of personnel classification shall be defined as those who take direction from a manager with respect to the execution of the project but do not require significant supervision. Additionally, those in the mid-level possess mature, marketable skills and experience in their given area of expertise. All proposed personnel must have higher qualifications than entry-level			
		1. 2. 3.	\$ _____
		1. 2. 3.	\$ _____
		1. 2. 3.	\$ _____
<b>ENTRY-LEVEL Cost of Capital/Rate of Return Personnel</b>			
An entry-level of personnel classification shall be defined as those who take detailed instructions from a manager and have limited to no decision-making authority. Additionally, the skills of those in the entry-level are not as mature as those at mid-level and they possess limited experience in their given area of expertise. All proposed personnel must have at least six (6) months of experience in the proposed area and be past any personnel probationary period.			
		1. 2. 3.	\$ _____
		1. 2. 3.	\$ _____
		1. 2. 3.	\$ _____



4.1.2 Cost of Capital/Rate of Return Services/Projects/Per Diem Price:

The offeror shall state a firm fixed per diem for providing services in accordance with the provisions and requirements stated herein.

Line #	Pricing Specification	Price
	Firm fixed per diem	\$ _____

4.2 Mergers and Acquisitions:4.2.1 Mergers and Acquisitions Personnel Classification Prices:

The offeror shall state the personnel classification proposed to provide services, the name of the person(s) assigned to that classification, and the firm fixed price per hour for each classification. If additional space is needed, the offeror may attach copies of this page.

Line #	Personnel Classification	Name of Person(s) Proposed	Firm Fixed Price Per Hour
<b>SENIOR LEVEL Mergers and Acquisitions Personnel</b>			
A senior level personnel classification shall be defined as management/supervisory level and/or highest technically skilled who will be assigned lead roles within requested projects. All proposed personnel must have higher qualifications than mid-level.			
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
<b>MID-LEVEL Mergers and Acquisitions Personnel</b>			
A mid-level of personnel classification shall be defined as those who take direction from a manager with respect to the execution of the project but do not require significant supervision. Additionally, those in the mid-level possess mature, marketable skills and experience in their given area of expertise. All proposed personnel must have higher qualifications than entry-level			
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____

Line #	Personnel Classification	Name of Person(s) Proposed	Firm Fixed Price Per Hour
<b>ENTRY-LEVEL Mergers and Acquisitions Personnel</b> An entry-level of personnel classification shall be defined as those who take detailed instructions from a manager and have limited to no decision-making authority. Additionally, the skills of those in the entry-level are not as mature as those at mid-level and they possess limited experience in their given area of expertise. All proposed personnel must have at least six (6) months of experience in the proposed area and be past any personnel probationary period.			
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____

#### 4.2.2 Mergers and Acquisitions/Per Diem Price:

The offeror shall state a firm fixed per diem for providing services in accordance with the provisions and requirements stated herein.

Line #	Pricing Specification	Price
	Firm fixed per diem	\$ _____

#### 4.3 Finance Cases:

##### 4.3.1 Finance Cases Personnel Classification Prices:

The offeror shall state the personnel classification proposed to provide services, the name of the person(s) assigned to that classification, and the firm fixed price per hour for each classification. If additional space is needed, the offeror may attach copies of this page.

Line #	Personnel Classification	Name of Person(s) Proposed	Firm Fixed Price Per Hour
<b>SENIOR LEVEL Finance Cases Personnel</b> A senior level personnel classification shall be defined as management/supervisory level and/or highest technically skilled who will be assigned lead roles within requested projects. All proposed personnel must have higher qualifications than mid-level.			
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____

Line #	Personnel Classification	Name of Person(s) Proposed	Firm Fixed Price Per Hour
<b>MID-LEVEL Finance Cases Personnel</b>			
A mid-level of personnel classification shall be defined as those who take direction from a manager with respect to the execution of the project but do not require significant supervision. Additionally, those in the mid-level possess mature, marketable skills and experience in their given area of expertise. All proposed personnel must have higher qualifications than entry-level			
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
<b>ENTRY-LEVEL Finance Cases Personnel</b>			
An entry-level of personnel classification shall be defined as those who take detailed instructions from a manager and have limited to no decision-making authority. Additionally, the skills of those in the entry-level are not as mature as those at mid-level and they possess limited experience in their given area of expertise. All proposed personnel must have at least six (6) months of experience in the proposed area and be past any personnel probationary period.			
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____

#### 4.3.2 Finance Cases/Per Diem Price:

The offeror shall state a firm fixed per diem for providing services in accordance with the provisions and requirements stated herein.

Line #	Pricing Specification	Price
	Firm fixed per diem	\$ _____

#### 4.4 Technical Assistance/Consultation:

##### 4.4.1 Technical Assistance/Consultation Personnel Classification Prices:

The offeror shall state the personnel classification proposed to provide services, the name of the person(s) assigned to that classification, and the firm fixed price per hour for each classification. If additional space is needed, the offeror may attach copies of this page.

Line #	Personnel Classification	Name of Person(s) Proposed	Firm Fixed Price Per Hour
--------	--------------------------	-------------------------------	------------------------------

Line #	Personnel Classification	Name of Person(s) Proposed	Firm Fixed Price Per Hour
<b>SENIOR LEVEL Technical Assistance/Consultation Personnel</b>			
A senior level personnel classification shall be defined as management/supervisory level and/or highest technically skilled who will be assigned lead roles within requested projects. All proposed personnel must have higher qualifications than mid-level.			
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
<b>MID-LEVEL Technical Assistance/Consultation Personnel</b>			
A mid-level of personnel classification shall be defined as those who take direction from a manager with respect to the execution of the project but do not require significant supervision. Additionally, those in the mid-level possess mature, marketable skills and experience in their given area of expertise. All proposed personnel must have higher qualifications than entry-level			
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
<b>ENTRY-LEVEL Technical Assistance/Consultation Personnel</b>			
An entry-level of personnel classification shall be defined as those who take detailed instructions from a manager and have limited to no decision-making authority. Additionally, the skills of those in the entry-level are not as mature as those at mid-level and they possess limited experience in their given area of expertise. All proposed personnel must have at least six (6) months of experience in the proposed area and be past any personnel probationary period.			
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____
	_____	1. 2. 3.	\$ _____

#### 4.4.2 Technical Assistance/Consultation/Per Diem Price:

The offeror shall state a firm fixed per diem for providing services in accordance with the provisions and requirements stated herein.

Line #	Pricing Specification	Price
	Firm fixed per diem	\$ _____

**4.5 Renewal Option Pricing:**

The offeror must indicate below the maximum allowable percentage of price increase or guaranteed minimum percentage of price decrease applicable to the renewal option years. If a percentage is not proposed (i.e. left blank, page not returned, etc.), the state shall have the right to execute the option at the same price(s) proposed for the original contract period. Statements such as "a percentage of the then-current price" or "consumer price index" are NOT ACCEPTABLE.

All increases or decreases shall be calculated against the ***original*** contract price, **not** against the previous year's price. A cumulative calculation shall not be utilized.

<b><u>Potential Renewal Period</u></b>	<b><u>Maximum Increase</u></b>		<b><u>Minimum Decrease</u></b>
First Renewal Period	Original Price <b>+</b> _____%	<b>or</b>	Original Price <b>-</b> _____%
Second Renewal Period	Original Price <b>+</b> _____%	<b>or</b>	Original Price <b>-</b> _____%

~ Do not complete both a maximum increase and a minimum decrease for the same renewal period. ~

**EXHIBIT A****PRIOR EXPERIENCE OF OFFEROR**

The offeror should copy and complete this form for each reference being submitted (at least 3) as demonstration of the offeror and subcontractor's prior experience. In addition, the offeror is advised that if the contact person listed for the reference is unable to be reached during the evaluation, the listed experience may not be considered.

<b>Offeror/Subcontractor Name:</b>	
<b>Reference Information (Prior Services Performed For:)</b>	
Name, Address, Contact Name and Phone Number of Reference Company:	Org. Name:
	Org. Address:
	Contact Name & Title:
	Contact Phone & E-Mail:
Key Dates:	Proj. Initiation:
	Proj. Completion:
	Implementation/Approval:
Personnel (include all key personnel & identify role)  <i>Attach additional pages as necessary.</i>	
Description of Prior Services Performed  <b>Include copies of work performed conducting cost of capital/rate of return analyses, mergers and acquisitions analyses and evaluating financing requests.</b>	Requirements:
	What offeror did:
	How the offeror did it:
	Results:
	Additional detail:

*As the contact person for the reference provided above, my signature below verifies that the information presented on this form is accurate. I am available for contact by the State of Missouri for additional discussions regarding my/my company's association with the offeror referenced above:*

---

*Signature of Reference Contact Person*


---

*Date of Signature*

**EXHIBIT B****EXPERTISE OF PERSONNEL**

(Copy table and complete for personnel proposed for each Service Category  
May also attach resumes for key personnel)

<b><u>Cost of Capital/Rate of Return</u></b>	
<b>Title/Classification of Person:</b> _____ (copy and complete for any additional personnel classification/title)	
<b>Name of Person:</b>	
Position Description for this Project:	
Describe the person's planned duties/role proposed herein	
Educational Degree (s): include college or university, major, and dates	
# of years experience in Cost of Capital/Rate of Return	
# of years employed with offeror	
Previous employer(s), dates	
Identify (describe) specific information about experience in the following:	Clearly identify the experience, provide dates, describe the person's role and extent of involvement in the experience

<b><u>Mergers and Acquisitions</u></b>	
<b>Title/Classification of Person:</b> _____ (copy and complete for any additional personnel classification/title)	
<b>Name of Person:</b>	
Position Description for this Project:	
Describe the person's planned duties/role proposed herein	
Educational Degree (s): include college or university, major, and dates	
# of years experience in Mergers and Acquisitions	
# of years employed with offeror	
Previous employer(s), dates	
Identify (describe) specific information about experience in the following:	Clearly identify the experience, provide dates, describe the person's role and extent of involvement in the experience

**EXPERTISE OF PERSONNEL**

(Copy table and complete for personnel proposed for each Service Category  
May also attach resumes for key personnel)

<b><u>Finance Cases</u></b>	
<b>Title/Classification of Person:</b> _____ (copy and complete for any additional personnel classification/title)	
<b>Name of Person:</b>	
Position Description for this Project:	
Describe the person's planned duties/role proposed herein	
Educational Degree (s): include college or university, major, and dates	
# of years experience in Finance Cases	
# of years employed with offeror	
Previous employer(s), dates	
Identify (describe) specific information about experience in the following:	Clearly identify the experience, provide dates, describe the person's role and extent of involvement in the experience

<b><u>Technical Assistance/Consultation</u></b>	
<b>Title/Classification of Person:</b> _____ (copy and complete for any additional personnel classification/title)	
<b>Name of Person:</b>	
Position Description for this Project:	
Describe the person's planned duties/role proposed herein	
Educational Degree (s): include college or university, major, and dates	
# of years experience in Technical Assistance/Consultation	
# of years employed with offeror	
Previous employer(s), dates	
Identify (describe) specific information about experience in the following:	Clearly identify the experience, provide dates, describe the person's role and extent of involvement in the experience



**EXHIBIT C**  
**Additional Company and Other Miscellaneous Information**

**1. OFFEROR INFORMATION –**

The offeror should complete the following with information about the offeror's organization and should provide information that documents and verifies the number of years stated in each blank, as appropriate:

<b><u>Information</u></b>	<b><u>Number of Years</u></b>	<b><u>Explanation and Detailed Support</u></b>
Total number of years in business Describe the nature of your business	_____	
Total number of years:		
❖ providing cost of capital/rate of return analyses	_____	
❖ providing mergers and acquisitions analyses	_____	
❖ evaluating financing requests	_____	
❖ writing testimony	_____	
❖ writing recommendations	_____	
❖ testifying in a utility regulatory environment	_____	
Total number of years experience in gas industry	_____	
Total number of years experience in electric industry	_____	
Total number of years experience in water industry	_____	
Describe the structure of the organization including any board of directors, partners, top departmental management, etc		

<b><u>Information</u></b>	<b><u>Explanation and Detailed Support</u></b>
Organizational history- including ownership structure, any pending litigation, any civil or criminal judgments, any bankruptcy proceedings, etc.	
Current financial condition – (if available, attach most recent year audited financial statements, if available. If the offeror is a subsidiary, provide this information for the parent company)	

**2. THE OFFEROR SHOULD PROVIDE THE FOLLOWING INFORMATION:**

- a. Provide a description of the services that will be performed by Missourians.
- b. Provide a description of the economic impact returned to the State of Missouri through tax revenue obligations.
- c. Provide a description of the offeror's company's economic presence within the State of Missouri (e.g., type of facilities: sales offices; sales outlets; divisions; manufacturing; warehouse; other), including Missouri employee statistics.

- d. If any products and/or services offered under this RFP are being manufactured or performed at sites outside the continental United States, the offeror **MUST** disclose such fact and provide details with the proposal.

### 3. ORGANIZATIONAL CHART

The offeror should provide an organizational chart showing the staffing and lines of authority for the key personnel to be used.

- a. It is recommended that two organizational charts be included. One organizational chart should outline the total organization and where the team(s) proposed fit into the total organization. The second chart should be an organizational chart outline the team(s) proposed.
- b. The organizational chart should include the following information:
  - 1) The relationship of service personnel to management and support personnel.
  - 2) The names of the personnel and the working titles of each.
  - 3) Any proposed subcontractors including management, supervisory, and other key personnel.
- c. Along with a detailed organizational chart, the offeror should describe the following:
  - 1) How services of the contract will be managed, controlled, and supervised in order to ensure satisfactory contract performance.
  - 2) Total Personnel Resources - The offeror should provide information that documents the depth of resources to ensure completion of all requirements on time and on target. If the offeror has other ongoing contracts that also require personnel resources, the offeror should document how sufficient resources will be provided to the State of Missouri.

- 4. Organizations for the Blind or Sheltered Workshop** - If the offeror qualifies as either a nonprofit organization for the blind or a sheltered workshop, or if the offeror is proposing to include products and/or services manufactured, produced, or assembled by such an organization, the offeror should identify the name of the organization in the space below and should attach all supporting documentation, as referenced elsewhere herein.

Name & Address of Organization for Blind/Sheltered Workshop:	
--	--

- 5. Employee Bidding/Conflict of Interest** - Offerors who are employees of the State of Missouri, a member of the General Assembly or a statewide elected official must comply with Sections 105.450 to 105.458 RSMo regarding conflict of interest. If the offeror and/or any of the owners of the offeror's organization are currently an employee of the State of Missouri, a member of the General Assembly or a statewide elected official, please provide the following information.

Name of State Employee, General Assembly Member, or Statewide Elected Official:	
	In what office/agency are they employed?
	Employment Title:
Percentage of ownership interest in offeror's organization:	_____ %

**6. Offeror's MBE/WBE Status** - Executive Order 98-21 directs state agencies to increase the participation of certified minority business enterprises (MBE) and women business enterprises (WBE) in State procurements. MBE/WBE certification by the State of Missouri, Office of Administration, Office of Equal Opportunity (OEO) is required to be considered an eligible MBE/WBE in meeting participation goals

If you qualify as a MBE or a WBE as defined in 37.020 RSMo, please mark the appropriate blank below.

_____	MBE
-------	-----

_____	WBE
-------	-----

_____	Both M & WBE
-------	--------------

To obtain an application for certification, go to the OEO Internet web site and download an application from: <http://www.oa.state.mo.us/oao/Application-profit.pdf> or contact the MBE/WBE Certification Program at 877-259-2963 or email [nancy.heyer@oa.mo.gov](mailto:nancy.heyer@oa.mo.gov)

**STATE OF MISSOURI**  
**DIVISION OF PURCHASING AND MATERIALS MANAGEMENT**  
**TERMS AND CONDITIONS -- REQUEST FOR PROPOSAL**

## 1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in a Request for Proposal (RFP) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing and Materials Management (DPMM)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an RFP or to a contract.
- c. **Attachment** applies to all forms which are included with an RFP to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Proposal Opening Date and Time** and similar expressions mean the exact deadline required by the RFP for the receipt of sealed proposals.
- e. **Offeror** means the person or organization that responds to an RFP by submitting a proposal with prices to provide the equipment, supplies, and/or services as required in the RFP document.
- f. **Buyer** means the procurement staff member of the DPMM. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful offeror as a result of an RFP and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an RFP for the offeror to complete and submit with the sealed proposal prior to the specified opening date and time.
- j. **Request for Proposal (RFP)** means the solicitation document issued by the DPMM to potential offerors for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition.
- m. **Pricing Page(s)** applies to the form(s) on which the offeror must state the price(s) applicable for the equipment, supplies, and/or services required in the RFP. The pricing pages must be completed and submitted by the offeror with the sealed proposal prior to the specified proposal opening date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of DPMM.
- o. **Shall** has the same meaning as the word **must**.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

## 2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DPMM.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the RFP or resulting contract shall be in the Circuit Court of Cole County, Missouri.

## 3. OPEN COMPETITION/REQUEST FOR PROPOSAL DOCUMENT

- a. It shall be the offeror's responsibility to ask questions, request changes or clarification, or otherwise advise the DPMM if any language, specifications or requirements of an RFP appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source. Any and all communication from offerors regarding specifications, requirements, competitive proposal process, etc., must be directed to the buyer from the DPMM, unless the RFP specifically refers the offeror to another contact. Such communication should be received at least ten calendar days prior to the official proposal opening date.
- b. Every attempt shall be made to ensure that the offeror receives an adequate and prompt response. However, in order to maintain a fair and equitable procurement process, all offerors will be advised, via the issuance of an amendment to the RFP, of any relevant or pertinent information related to the procurement. Therefore, offerors are advised that unless specified elsewhere in the RFP, any questions received less than ten calendar days prior to the RFP opening date may not be answered.
- c. Offerors are cautioned that the only official position of the State of Missouri is that which is issued by the DPMM in the RFP or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The DPMM monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among offerors, price-fixing by offerors, or any other anticompetitive conduct by offerors which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The RFP is available for viewing and downloading on the state's On-Line Bidding website. Registered vendors are electronically notified or mailed the RFP based on the information maintained in the State of Missouri's vendor database. If any portion of the address is incorrect, the offeror must notify the buyer in writing or update the address themselves on the state's On-Line Bidding website.
- f. The DPMM reserves the right to officially amend or cancel an RFP after issuance.

## 4. PREPARATION OF PROPOSALS

- a. Offerors **must** examine the entire RFP carefully. Failure to do so shall be at offeror's risk.
- b. Unless otherwise specifically stated in the RFP, all specifications and requirements constitute minimum requirements. All proposals must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the RFP, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The offeror may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the proposal. In addition, the offeror shall explain, in

detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Proposals which do not comply with the requirements and specifications are subject to rejection without clarification.

- d. Proposals lacking any indication of intent to offer an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the RFP.
- e. In the event that the offeror is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an RFP, such a offeror may submit a proposal which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the DPMM and the offeror, if such offeror is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the RFP. Any such offeror needs to include in the proposal, a complete list of statutory references and citations for each provision of the RFP which is affected by this paragraph.
- f. All equipment and supplies offered in a proposal must be new, of current production, and available for marketing by the manufacturer unless the RFP clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the RFP.
- h. Prices offered shall remain valid for 90 days from proposal opening unless otherwise indicated. If the proposal is accepted, prices shall be firm for the specified contract period.
- i. Any foreign offeror not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their proposal in order to be considered for award.

## 5. SUBMISSION OF PROPOSALS

- a. Proposals may be submitted by delivery of a hard copy to the DPMM office. Electronic submission of proposals through the State of Missouri's On-Line Bidding website is not available unless stipulated in the RFP. Delivered proposals must be sealed in an envelope or container, and received in the DPMM office located at 301 West High St, Rm 630 in Jefferson City, MO no later than the exact opening time and date specified in the RFP. All proposals must (1) be submitted by a duly authorized representative of the offeror's organization, (2) contain all information required by the RFP, and (3) be priced as required. Hard copy proposals may be mailed to the DPMM post office box address. However, it shall be the responsibility of the offeror to ensure their proposal is in the DPMM office (address listed above) no later than the exact opening time and date specified in the RFP.
- b. The sealed envelope or container containing a proposal should be clearly marked on the outside with (1) the official RFP number and (2) the official opening date and time. Different proposals should not be placed in the same envelope, although copies of the same proposal may be placed in the same envelope.
- c. A proposal submitted electronically may be modified on-line prior to the official opening date and time. A proposal which has been delivered to the DPMM office, may be modified by signed, written notice which has been received by the DPMM prior to the official opening date and time specified. A proposal may also be modified in person by the offeror or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a proposal shall not be honored.
- d. A proposal submitted electronically may be canceled on-line prior to the official opening date and time. A proposal which has been delivered to the DPMM office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DPMM prior to the official opening date and time specified. A proposal may also be withdrawn in person by the offeror or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to withdraw a proposal shall not be honored.
- e. When submitting a proposal electronically, the offeror indicates acceptance of all RFP terms and conditions by clicking on the "Submit" button on the Electronic Bid Response Entry form. Offerors delivering a hard copy proposal to DPMM must sign and return the RFP cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the offeror of all RFP terms and conditions. Failure to do so may result in rejection of the proposal unless the offeror's full compliance with those documents is indicated elsewhere within the offeror's response.

## 6. PROPOSAL OPENING

- a. Proposal openings are public on the opening date and at the opening time specified on the RFP document. Only the names of the respondents shall be read at the proposal opening and posted on the state's On-Line Bidding website. The contents of the responses shall not be disclosed at this time.
- b. Proposals which are not received in the DPMM office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late proposals may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

## 7. PREFERENCES

- a. In the evaluation of proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 98-21, contractors are encouraged and may be required per the RFP to utilize certified minority and women-owned businesses in selecting subcontractors.

## 8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the offeror and request clarification of the intended proposal. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by an offeror shall be subject to evaluation if deemed by the DPMM to be in the best interest of the State of Missouri.
- c. The offeror is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the RFP, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the offeror whose proposal (1) complies with all mandatory specifications and requirements of the RFP and (2) is the lowest and best proposal, considering price, responsibility of the offeror, and all other evaluation criteria specified in the RFP and any subsequent negotiations.
- e. In the event all offerors fail to meet the same mandatory requirement in an RFP, DPMM reserves the right, at its sole discretion, to waive that requirement for all offerors and to proceed with the evaluation. In addition, the DPMM reserves the right to waive any minor irregularity or technicality found in any individual proposal.
- f. The DPMM reserves the right to reject any and all proposals.
- g. When evaluating a proposal, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a proposal, from an offeror, from offeror's references, or from any other source.
- h. Any information submitted with the proposal, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a proposal and the award of a contract.
- i. Negotiations may be conducted with those offerors who submit potentially acceptable proposals. Proposal revisions may be permitted for the purpose of obtaining best and final offers. In conducting negotiations, there shall be no disclosure of any information submitted by competing offerors.
- j. Any award of a contract shall be made by notification from the DPMM to the successful offeror. The DPMM reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by DPMM based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.

- k. Pursuant to Section 610.021 RSMo, proposals and related documents shall not be available for public review until after a contract is executed or all proposals are rejected.
- l. The DPMM posts all proposal results on the On-line Bidding website for a reasonable period after proposal award and maintains images of all proposal file material for review. Offerors who include an email address with their proposal will be notified of the award results via email.
- m. The DPMM reserves the right to request clarification of any portion of the offeror's response in order to verify the intent of the offeror. The offeror is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- n. Any proposal award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- o. The final determination of contract(s) award shall be made by DPMM.

## **9. CONTRACT/PURCHASE ORDER**

- a. By submitting a proposal, the offeror agrees to furnish any and all equipment, supplies and/or services specified in the RFP, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the RFP, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with RFP changes/additions, (2) the contractor's proposal including the contractor's BAFO, and (3) DPMM's acceptance of the proposal by "notice of award" or by "purchase order."
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the DPMM or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

## **10. INVOICING AND PAYMENT**

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the DPMM.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the RFP.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.

## **11. DELIVERY**

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

## **12. INSPECTION AND ACCEPTANCE**

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

## **13. WARRANTY**

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the DPMM, (2) be fit and sufficient for the purpose expressed in the RFP, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

## **14. CONFLICT OF INTEREST**

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the proposal the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

## **15. REMEDIES AND RIGHTS**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or

will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

## **16. CANCELLATION OF CONTRACT**

- a. In the event of material breach of the contractual obligations by the contractor, the DPMM may cancel the contract. At its sole discretion, the DPMM may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide DPMM within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the DPMM will issue a notice of cancellation terminating the contract immediately.
- c. If the DPMM cancels the contract for breach, the DPMM reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the DPMM deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

## **17. COMMUNICATIONS AND NOTICES**

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

## **18. BANKRUPTCY OR INSOLVENCY**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DPMM immediately.
- b. Upon learning of any such actions, the DPMM reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

## **19. INVENTIONS, PATENTS AND COPYRIGHTS**

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

## **20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the DPMM shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DPMM until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

## **21. AMERICANS WITH DISABILITIES ACT**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

## **22. FILING AND PAYMENT OF TAXES**

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore offeror's failure to maintain compliance with chapter 144, RSMo may eliminate their proposal from consideration for award.

## **23. TITLES**

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.